

SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 93-21 Decided November 30, 1994

Appeal from a decision of the Moab District Office, Bureau of Land Management, denying organization "affected interest status" in grazing management decisions pertaining to Arth's Pasture grazing allotment.

Set aside and remanded.

1. Administrative Procedure: Decisions—Bureau of Land Management—Federal Land Policy and Management Act of 1976: Grazing Leases and Permits—Federal Land Policy and Management Act of 1976: Public Participation—Grazing Permits and Licenses: Generally

A decision by BLM denying an organization "affected interest status" in grazing matters is properly set aside where BLM did not state therein why it felt the organization did not meet relevant criteria. That failure violated not only the terms of a governing BLM State Office Instruction Memorandum, but also the more general requirement, imposed by well-established precedent, that its decision must contain a reasoned and factual explanation providing a basis for understanding and accepting the decision, or alternatively, for appealing and disputing it before this Board.

APPEARANCES: Scott Groene, Esq., Moab, Utah, for appellant; Beth Wendel, Esq., Thomas D. Lustig, Esq., Boulder, Colorado, for amicus curiae National Wildlife Federation. 1/

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Southern Utah Wilderness Alliance (SUWA) has appealed from the September 1, 1992, decision of the Moab, Utah, District Office, Bureau

1/ The National Wildlife Federation (NWF) has filed a petition to intervene in this proceeding. It is appropriate to grant NWF, which is involved with BLM in other cases presenting similar circumstances, status as amicus curiae. See Powder River Resource Council, IBLA 92-12 (Order of Dec. 26, 1991); Red Thunder, 117 IBLA 167, 170 n.2, 97 I.D. 263, 265 n.2 (1990).

of Land Management (BLM), denying SUWA "affected interest status" in BLM's deliberations concerning the Arth's Pasture grazing allotment. For the reasons set out below, we set aside BLM's decision and remand with instructions to consider SUWA's application for such status.

The record reveals that on August 5, 1992, SUWA filed a written request with BLM that it be granted "affected interest" status pursuant to 43 CFR 4100.0-5, in order to be involved in BLM's grazing management decision. In that request, SUWA recited, inter alia, that its "staff and members regularly use the Arth's Pasture allotment for aesthetic and recreational purposes," and that its "members have probably made thousands of visits to this allotment." SUWA also set out in detail an extensive history of participation in BLM's management of livestock grazing on other specific allotments. The recitation was in the form of a personal declaration by Scott Groene, Esq., staff attorney for SUWA.

On September 1, 1992, BLM denied SUWA's request, ruling that it did not meet the criteria outlined in guidelines prepared by the Utah State Office, BLM, and set out in Instruction Memorandum (IM) UT 92-201. SUWA filed a timely appeal from BLM's decision denying it "affected interest" status.

Under 43 CFR 4100.0-5, the term "affected interests" means "any individual or organization that has expressed in writing to the authorized officer concern for the management of livestock grazing on specific allotments and who has been determined by the authorized officer to be an affected interest."

There is no doubt that SUWA has complied with the first portion of the definition of 43 CFR 4100.0-5. BLM has made no effort to contradict the plain statements in SUWA's request that it has previously expressed concern in writing for the management of livestock grazing, both on the Arth's Pasture Allotment and other allotments.

It remains to determine only whether the authorized officer has abused his discretion in determining whether SUWA is an "affected interest." See Donald K. Majors, 123 IBLA 142, 147-48 (1992). Although this Board will afford considerable deference to the party exercising discretionary authority when the exercise appears to be reasonable and supported by the evidence, we do not find adequate support in the record for BLM's decision to disallow SUWA "affected interest" status here.

[1] BLM did not state why it felt that SUWA did not meet the criteria set out in IM UT 92-201. BLM's conclusory declaration that SUWA's "request does not meet the criteria outlined in" the IM is inadequate to explain why its request was inadequate. BLM failed to meet the demands of IM UT 92-201, which states that "[i]f an individual or group is rejected, the letter of rejection shall state the reasons why." Further, BLM failed to comply with the more general requirement, imposed by well-established precedent, that its decision must contain a reasoned and factual explanation providing a basis for understanding and accepting the decision, or alternatively, for

appealing and disputing it before this Board. Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 368 (1990); Roger K. Ogden, 77 IBLA 4, 90 I.D. 481 (1983); Petrovest, Inc., 71 IBLA 250 (1983). BLM's decision is set aside, and the matter is remanded to BLM to readjudicate SUWA's request.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

David L. Hughes
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge